

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.08.2014

+ **W.P.(C) 2853/2012 & CM No.14658/2013**

HARPAL SINGH

..... Petitioner

versus

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD.**

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr R. K. Jain.

For the Respondent : Ms Renuka Arora.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner is a partner in a firm-M/s Hemkunt Industries and has filed the present petition challenging the order dated 01.06.2011 passed by the respondent (hereinafter referred to as the 'impugned order'). By the impugned order, the respondent had cancelled the allotment of a dwelling Unit made in favour of the petitioner and forfeited amount of ₹2,10,000/- deposited by the petitioner along with his application.

2. The respondent - Delhi State Industrial and Infrastructure Development Corporation Ltd. (hereinafter referred to as 'DSIIDC') had passed the impugned order by sustaining the allegation that the petitioner and his partner had secured the allotment of two dwelling units by misrepresentation. Thus, the limited controversy involved in the present

petition is whether the petitioner and/or his partner were guilty of misrepresentation.

3. Briefly stated, the facts are that certain industrial units which were functioning in non-conforming areas were closed down and DSIIDC, the respondent herein, had allotted industrial plots for relocation of some of those industries at various industrial estates developed by DSIIDC. M/s Hemkunt Industries, which was constituted by the petitioner and Savinder Singh as partners, was also allotted a plot for relocation of its industrial unit from a non-confirming area.

4. DSIIDC floated a scheme known as 'Rajiv Gandhi Housing Project Self Finance Cost Effective Workers Housing Scheme' in September 2003 (hereinafter referred to as 'the 2003 scheme') for allotment of dwelling units to successful allottees of plots at Bawana Industrial Complex to provide an economical residence for workers in the said Industrial estate. It is stated that the applications for the said scheme were received during the period 27.09.2003 to 30.10.2003. The eligibility for allotment was specified in the brochure for the scheme and reads as under:-

“5. ELIGIBILITY AND MODE OF ALLOTMENT:

- a) The applicant must be a citizen of India & resident of NCT of Delhi and should have attained the age of 18 years on the date of application.
- b) The applicant should either be a bonafide allottee or industrial worker in DSIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with the Govt. of NCT of Delhi or its PSUs.
- c) The allotment is proposed to be made by draw of lots among eligible applicants.

- d) The decision of DSIDC regarding allotment of dwelling units shall be final and binding on the applicants.
- e) Upto five dwelling units will be allotted to an allottee under Re-location scheme through a single application form and one unit to indl. worker of an allottee under Re-location. However, the scheme shall be simultaneously extended to the industrial workers, allottee entrepreneurs of other Indl. Areas developed, under the Relocation Scheme”. Applications received will be considered in accordance with the following priority:
- (i) **First preference:** Allotment of houses will be given to the bonafide industrial workers of the allottee entrepreneurs of Bawana Industrial Area. Unallotted houses, if any, shall be considered for allotment to bonafide industrial workers of allottee entrepreneurs under the re-location scheme of Narela Industrial Complex.
- (ii) In case adequate number of applications from the industrial workers are not received, the remaining houses will be allotted to the allottee entrepreneurs for residential use by their workers who may book upto 5 flats for their workers. Here again allotment of houses shall be given to the allottees of Bawana Industrial Area first. However, if there still remain some unallotted houses, the same will be offered to the allottees of Narela Industrial Complex under the relocation scheme and thereafter, the scheme shall be extended to other categories of entrepreneurs for the left over unallotted houses. In case some houses still remain unallotted, DSIDC may, in those circumstance consider allotting them to the workers of GNCTD & its PSUs. Applicants shall have no right for allotment of the category of flat applied for. Allotment shall be subject to availability of flats. If No. of applicants are more than the No. of flats in the particular category then allotment shall

be through draw of lots and remaining applicants shall be considered for available other category.”

5. Savinder Singh-petitioner's partner in M/s Hemkunt Industries applied for a dwelling unit under the 2003 scheme (Application No.4528). Pursuant to the said application, DSIIDC allotted a flat to Savinder Singh on his submitting an affidavit affirming that the petitioner had not booked a residential flat in the scheme. The petitioner also furnished an affidavit stating that he had no objection, if a flat was allotted to Savinder Singh in his capacity as a partner of M/s Hemkunt Industries.

6. A separate brochure was printed and circulated for inviting applications in September 2004 for allotment of dwelling units. The eligibility criteria as indicated in the brochure were similar to the eligibility criteria as published in the brochure for the 2003 scheme.

7. The petitioner applied for a dwelling unit (Application No. 5782) and deposited the requisite amount of ₹20,000/- by a Bank Draft. On 15.11.2006, the petitioner was allotted a flat being flat no.11/849/D and the petitioner was called upon to pay ground rent and maintenance charges @ 2.5% amounting to ₹10,000/-. Thereafter, on 05.04.2006, 27.12.2006 and 19.11.2007, the petitioner paid further sums aggregating ₹1,96,906/- to DSIIDC for acquiring the dwelling unit in question. The petitioner was further called upon to submit the necessary documents for issuance of a possession letter. In terms of the said allotment letter, the petitioner submitted the necessary documents for the possession of the dwelling unit on 11.02.2009.

8. Thereafter, the petitioner was served with a Show Cause Notice dated 22.09.2009, which contained an allegation that the allotment made to Savinder Singh had been retained by him on the basis of an incorrect affidavit. The petitioner responded to the aforesaid Show Cause Notice, however, the allotment in favour of the petitioner was cancelled and the amount paid by the petitioner was forfeited by the impugned order.

9. It is contended by the learned counsel for the petitioner that the 2003 scheme and the scheme floated in 2004 were separate schemes and there was no misrepresentation on the part of the petitioner or Savinder Singh.

10. The learned counsel for the DSIIDC submitted that the 2003 scheme floated in September 2003 and the scheme circulated in September 2004 were essentially one and the same scheme. Since certain flats remained unallotted in the first phase of the 2003 scheme, applications were invited in the second phase in 2004. She stated that although the scheme permitted allottees of industrial plots to book up to five flats, DSIIDC had decided to allot only one flat for an allottee of an industrial plot because the number of applications exceeded the numbers of available flats. Accordingly, it was contended that as Savinder Singh had secured an allotment of a flat in the first phase, the petitioner would not be entitled for an allotment in the second phase. She further referred to the decision of a Division Bench of this Court in **M.S. Sethi v. Delhi State Industrial and Infrastructure Development Corporation**: LPA No. 772/2010, decided on 20.04.2011, which had upheld the policy of the DSIIDC to allot only one flat for an applicant. She stated that in the present case, the allottee of the industrial plot was M/s Hemkunt Industries and thus, only one flat could be allotted.

11. The learned counsel for the DSIIDC referred to the affidavits affirmed by the petitioner and Savinder Singh on 19.06.2006 and 04.06.2007 respectively which clearly indicated that Savinder Singh had accepted the flat as a partner of M/s Hemkunt Industries and the petitioner had affirmed that he had no objection to the same. She also referred to the application submitted by Savinder Singh to DSIIDC (Application no. 4528) and drew the attention of this court to a pre-printed "Certificate from Employer" that certified Savinder Singh as an employee of the Industrial unit. It was submitted that the said certificate was signed by the petitioner and misrepresented the status of Savinder Singh.

12. I have heard the learned counsel for the parties at length.

13. At the outset, it is necessary to refer to the show cause notice dated 22.09.2011, which reads as under:-

"Show Cause Notice"

Whereas DSIIDC launched Housing Division for allotment of flats to Indl. workers and allotment in the year 2003 and 2004.

Whereas both the partners of Hemkunt Industries i.e. Sh. Harpal Singh (yourself) under App. No.5782 and Savinder Singh App. No. 4528 secured allotment of one flat each.

Whereas Sh. Savinder Singh was allotted flat under Indl. worker on the basis of employer certificate issued by you.

On scrutiny of a application form of Sh. Savinder Singh It was detected that he was not a employee of M/s Hemkunth Industries but a partner.

His allotment was retained on the basis of Affidavit submit by him that his partner has not booked any flat under the scheme which is found contrary to the fact.

Sh. Harpal Singh is hereby called upon to explain why allotment made to him under App. No. 5782 is withdrawn / cancelled.”

14. The allegations made in the above show-cause notice were sustained by the impugned order. It is pertinent to note that allotment of the dwelling unit in question to the petitioner has been cancelled, principally, on the allegation that the petitioner and/or his partner had secured the allotments by misrepresentation. DSIIDC has also forfeited the amount paid by the petitioner for allotment of the said flat. Although, it is the policy of DSIIDC not to allot more than one flat to an allottee of an industrial plot, however, the principal issue is not whether the petitioner had secured an allotment of a flat contrary to the policy but whether the petitioner and/or his partner had misrepresented to DSIIDC and secured the flats as a result thereof.

15. The application form submitted by Savinder Singh clearly indicates that he was a partner of M/s Hemkunt Industries and to that extent the allegation that he had misrepresented himself, as a worker of M/s Hemkunt Industries, is not accurate. The pre-printed form also included a Section titled “Certificate from Employer” which required the name of the worker to be filled in and certified by the Employer. Accordingly, the name of Savinder Singh was filled in and certified by the petitioner. This may be inaccurate but cannot be stated to be a misrepresentation because Savinder Singh had accurately disclosed himself to be a partner of M/s Hemkunt Industries in the opening sheet of the application. The explanation that

Savinder Singh was, in a larger sense, employed at the industrial unit and/or that the certificate was filed in because it was a part of the form is not relevant for the purpose of addressing the controversy at hand. This is so because Savinder Singh was, subsequently, allotted a dwelling unit in his capacity as a partner of M/s Hemkunt Industries. Savinder Singh had on the insistence of DSIIDC submitted an affidavit which reads as under:-

“AFFIDAVIT

I, Savinder Singh, son of Shri Harbans Singh resident of 41-B/2, Gali No. 10, Sant Garh, Tilak Nagar, New Delhi 110018, do hereby solemnly affirm and declare as under:-

1. That I am a partner of M/s. Hemkunt Industries, 41-B/2, Gali No. 10, Sant Garh, Tilak Nagar, New Delhi-110018. At the time of filling application form for allotment of residential flat under the Ist Scheme of Rajiv Gandhi Housing Schemes at Bawana, I had not clearly mentioned my designation in the said firm. I am the partner of the said firm and not the worker in the said firm.

2. That Mr. Harpal Singh is also partner of M/s. Hemkunt Industries, 41-B/2, Gali No.10, Sant Garh, Tilak Nagar, New Delhi-110018.

3. That I have been allotted Flat No. 5/91/A Bawana Residential Complex, Delhi in my individual name.

4. That the other partner Mr. Harpal Singh, has never booked the residential flat under the Ist Scheme of Rajiv Gandhi Housing Scheme at Bawana, or anywhere other.”

16. Although the above affidavit mentions that the designation of Savinder Singh was not clearly mentioned as a partner, a perusal of the application form indicates to the contrary. In any event, the affidavit clearly stated that Savinder Singh was a partner and not a worker. This affidavit

was accepted by DSIIDC and a flat was allotted pursuant thereto. Therefore, insofar as the controversy whether Savinder Singh was a worker or a partner of M/s Hemkunt Industries is concerned, DSIIDC cannot now allege that there was any misrepresentation resulting in the allotment to Savinder Singh. Undisputedly, Savinder Singh was allotted a flat in his capacity as a partner of M/s Hemkunt Industries and not as a worker of the industrial unit.

17. The second aspect that needs to be addressed is whether the above affidavit of Savinder Singh is false, in as much as, it affirms that the petitioner had not applied for a flat under the “Ist Scheme”.

18. According to DSIIDC, the applications for allotment of flats invited in September 2004 were pursuant to the second phase of the 2003 Scheme floated in September 2003. The petitioner, on the other hand, insists that the invitations for applications called by DSIIDC in September 2003 and September 2004 were two separate schemes. This controversy must be understood in the context of the allegation that the statement affirmed by Savinder Singh in his affidavit - *“Mr. Harpal Singh, has never book the residential flat under the Ist Scheme of Rajiv Gandhi Housing Scheme at Bawana, or anywhere other”* - amounts to misrepresentation.

19. The 2004 scheme (contended to be the second phase of the 2003 scheme on behalf of the DSIIDC) was floated in view of the fact that 2003 scheme did not fully exhaust the flats that were available for workers at the Bawana Industrial Complex. DSIIDC has constructed 3164 flats/houses (1500 Type-I and 1664 Type-II). Apparently, respondent received 1036

applications out of which 931 applicants were found to be eligible and one unit was allotted to each eligible applicant. Invitations were called for allotment of the remaining 2233 flats that remained unallotted. A separate brochure was printed for inviting applications in September 2004. It is pertinent to note that there was no reference in the brochure for treating application as a part of the 2003 scheme and for all practical purposes, the invitation to applications in September 2004 could be considered as a separate scheme. In the event DSIIDC wanted to treat the applications invited in September 2004 as an integral part of the 2003 scheme, it was necessary for DSIIDC to make a specific mention that the applications would be considered in conjunction with the applications received in the earlier round. The allottee of an industrial plot under 2003 Scheme was entitled to make an application for five flats. The brochure inviting applications circulated in September 2004 did not specifically indicate that any application made under the scheme in 2004, would be clubbed with the applications made earlier. In other words, if an allottee of an industrial plot had applied for five flats (to the extent permissible) in September 2003, there was nothing to indicate in the brochure that such allottee could not again apply for five flats under the scheme in 2004. In the event DSIIDC wanted to club the eligibility for purposes of application for flats, DSIIDC would have to so specify that the applications made by an allottee in September 2003 would be considered for determining his eligibility for applying in September 2004 i.e. a worker who had applied for a flat in September 2003 would be ineligible to apply in September 2004 and an allottee of an industrial plot who had applied for flats earlier (upto five in number) would be eligible only to apply for such number of flats so that the

aggregate number of flats applied for in September 2003 and September 2004 did not exceed five in number. Thus, in my view, the controversy whether the invitations for applications in September 2004 were pursuant to the second phase of the 2003 scheme or were pursuant to an independent and separate scheme is not material because for all practical purposes even the second phase of the 2003 scheme is liable to be construed as inviting applications independent of the one that had been submitted earlier.

20. If the statement affirmed by Savinder Singh that *“Mr. Harpal Singh, has never book the residential flat under the Ist Scheme of Rajiv Gandhi Housing Scheme at Bawana, or anywhere other”* is viewed in this perspective, it is clear that Savinder Singh had specified that the petitioner had not booked a residential flat in the first scheme. The expression “Ist scheme” clearly indicated that Savinder Singh was referring to the applications invited by DSIIDC in September 2003. According to DSIIDC, there was no first or second scheme. However, undeniably, DSIIDC accepted the affidavit affirmed by Savinder Singh which made a clear reference to the “Ist scheme”. Thus, irrespective of whether the invitations to application in September 2004 were the second phase of the same scheme or was a second independent scheme, the expression “Ist scheme” would in the given context clearly imply either the first phase or the first scheme; either way the statement cannot be a misrepresentation as the petitioner had not applied for a flat in the first phase of the 2003 scheme/first scheme. Thus, the allegation that the statement made by Savinder Singh in his affidavit was contrary to facts does not hold true.

21. The impugned order cancelling the allotment is premised only on the basis that the petitioner and his partner have secured allotment of flats by misrepresenting facts. These allegations having been found to be not sustainable, the impugned order is liable to be set aside. It is pertinent to note that the impugned order cancelling the allotment is not on the basis that DSIIDC had erroneously allotted the flat contrary to its policy but is based on a specific allegation of misrepresentation and the petitioner has also been visited with punishment by forfeiting the amount paid by the petitioner for securing the allotment of the dwelling unit in question.

22. This Court is conscious of the fact that setting aside the impugned order would imply that the petitioner and his partner end up acquiring two flats, which is contrary to the policy of DSIIDC of one flat for one applicant (allottee of an industrial plot). However, this has resulted from an error on the part of the DSIIDC and the petitioner cannot be penalised for the same. The petitioner had applied for the dwelling unit in 2004 along with the necessary deposit and the balance amount was also paid by the petitioner by November 2007 and in the circumstances, cancellation of allotment in 2011 would unfairly prejudice the petitioner for an error on the part of the DSIIDC.

23. For the reasons stated above, the petition is allowed. The impugned order is set aside. CM No.14658/2013 is dismissed.

24. Parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 28, 2014/RK